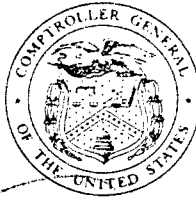


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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-200775

DATE: April 3, 1981

MATTER OF: Health Management Systems *Inc*

*[Protest Alleging That Proposal Was Unfairly Evaluated]*

DIGEST:

1. Reduction in protester's technical score due to evaluation panel's doubt that proposed Project Director would actually be available at start of performance was not arbitrary where offeror's only response to agency's expressed concern was that Project Director would be moving to area in near future.
2. Allegation that technical discussions were not meaningful is without merit where agency brought deficiency to protester's attention.
3. Agency's requirement that Project Director be available at outset of project did not constitute "unannounced" evaluation criterion since it was logically and reasonably related to major evaluation factor stated in solicitation.
4. Allegation that competitors were given unfair advantage by receipt of information denied protester is without merit where it has not been shown that any information improperly was released to protester's competitors.

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5. Claim for proposal preparation costs is denied where there is no showing that Government acted arbitrarily or capriciously with respect to protester's proposal.

Health Management Systems (HMS) protests the award of a contract to CSR, Incorporated under request for proposals (RFP) No. HSA 240-BCHS-97 issued by the Department of Health and Human Services (HHS). The solicitation was for the operation of a clearinghouse for information and materials related to genetics and genetic diseases.

HMS contends that it should have received the contract award since its proposal was found to be technically acceptable and offered the lowest cost. HMS also alleges that its technical proposal was unfairly evaluated, and that the negotiations were not meaningful. Further, HMS asserts that it was denied access to information which was provided to other offerors and which gave them an unfair competitive advantage.

The protest is denied.

At the outset, we note that HMS' assumption that it offered the lowest cost proposal is incorrect; HMS was the second low offeror. (CSR was third low but was highest-rated technically.) Furthermore, the solicitation clearly provided that "cost will be considered secondary to technical merit in the award selection process" and that "\* \* \* foremost consideration shall be given to the evaluation of technical proposals rather than cost or price." Consequently, there was no requirement that award be made on the basis of the lowest cost. See Buffalo Organization for Social and Technological Innovation, Inc., B-196279, February 7, 1980, 80-1 CPD 107.

With regard to the alleged improper evaluation of its technical proposal, HMS focuses on one particular aspect of the evaluation, relating to the availability of its proposed Project Director, Dr. Joseph De Simone. HMS states that it was advised during a debriefing by HHS that its proposal was rejected primarily because of doubts that Dr. De Simone would actually be available at the time of award. HMS asserts that the evaluation panel's assumption in this regard was erroneous.

HHS advises that during discussions conducted by phone, HMS was told of the evaluation panel's concern with regard to the availability of the Project Director, since the proposal indicated that he lived in Chicago and had continuing obligations and commitments there. In response to this concern, HMS' best and final offer stated that: "Dr. De Simone, who is currently living in Chicago, will be establishing residence in the Washington area in the near future."

This apparently satisfied the evaluation panel that Dr. De Simone did intend to relocate. In their opinion it did not, however, provide adequate assurance that he would be present when the project started, a matter which was considered crucial due to the Project Director's key role in and responsibility for the project. HMS' technical proposal was scored accordingly.

It is not the function of this Office to evaluate technical proposals. The determination of the needs of the Government and the method of accommodating such needs is primarily the responsibility of the procuring agency, which therefore is responsible for the overall determination of the relative desirability of proposals. Arthur Young & Company, B-196220, March 17, 1980, 80-1 CPD 205. In light of this, we have held that procuring officials enjoy a reasonable degree of discretion in evaluating proposals and such discretion must not be disturbed unless shown to be arbitrary or in violation of procurement statutes and regulations. Buffalo Organization for Social and Technological Innovation, Inc., supra.

We are unable to conclude that the evaluation panel acted arbitrarily or in violation of procurement statutes or regulations here. Having been advised only that Dr. De Simone would be establishing residence in the performance area in the near future, we believe that the evaluation panel could reasonably view that advice as insufficient assurance of his immediate availability.

HMS argues, however, that the discussions concerning Dr. De Simone's availability were inadequate because HHS only expressed a concern over where Dr. De Simone would perform his contract obligations, not when he would perform them. HHS responds that while its concern may not have been communicated expressly in terms of the need

for the protester to establish a precise date which the Project Director would be available, it was made clear that this individual's immediate involvement with the project was critical.

Thus, both parties agree that the issue of Dr. De Simone's availability was raised by HHS during the course of discussions. HMS believes, however, that HHS did not adequately emphasize that its concern was not limited to Dr. De Simone's place of residence.

The content and extent of the discussions necessary to satisfy the requirement for negotiations is a matter of judgment primarily for determination by procuring officials and is not subject to question by our Office unless shown to be clearly without a reasonable basis. E-Systems, Inc., B-191346, March 20, 1979, 79-1 CPD 192. We have held that requests for clarification or amplification or other statements made during oral discussions which lead offerors into areas of their proposals that are unclear are sufficient to alert offerors to deficiencies in their proposals. Id.

In our opinion, HHS met its obligation to conduct meaningful discussions by raising the issue of Dr. De Simone's availability as an area in need of clarification. See Okaw Industries, Inc., B-197306, September 29, 1980, 80-2 CPD 228. Even if HHS did couch its concern primarily in terms of Dr. De Simone's current place of residence, we think this reasonably conveyed the evaluation panel's desire for assurance that Dr. De Simone would be in Washington to oversee the project from its inception.

HMS also argues that immediate availability of the Project Director was an "unannounced" evaluation criterion and that the rejection of its proposal because of speculative concerns over Dr. De Simone's availability was therefore contrary to Federal contract principles.

In this regard, we note that the solicitation contained the following technical evaluation criteria and weights for each:

Problem	10%
Approach	20%

Personnel	30%
Corporate Experience	30%
Facilities	<u>10%</u>
	100%

These criteria were not further broken down into sub-criteria.

Although agencies are required to identify the major evaluation factors applicable to a procurement, they need not explicitly identify the various aspects of each which might be taken into account, provided those aspects are logically and reasonably related to or encompassed by the stated evaluation factors. Buffalo Organization for Social and Technological Innovation, Inc., supra. In this case, we believe HHS' requirement that the Project Director be available at the outset of the procurement is logically related to the stated evaluation factors, most specifically the "Personnel" criterion (which was in fact the one applied). Moreover, as noted above, HMS was sufficiently apprised of this requirement during the negotiation process. Therefore, we find no merit to HMS' argument in this regard.

Finally, HMS asserts that certain information was revealed to other offerors but denied to HMS, thus conferring an unfair advantage on its competitors. In support of this allegation, HMS has submitted a sworn affidavit from another firm which states that the firm requested and received copies of technical and progress reports of the incumbent contractor.

The contracting officer asserts that to her knowledge no firm was furnished information that was not also available to any other firm. Moreover, we fail to see how HMS has been prejudiced. The recipient and only known beneficiary of this alleged dissemination of information was the firm which submitted the noted affidavit, and the record shows that such firm did not submit an offer in the instant procurement. HMS offers no evidence that CSR improperly obtained any information to the protester's prejudice. Accordingly, we find no merit to HMS' allegation in this respect. See Monchik-Weber Associates, Inc., B-196433, August 8, 1980, 80-2 CPD 102.

We note that HMS has also alleged that HHS discriminated against it as a woman-owned business. HMS has offered no support for this allegation, nor is there anything in the record which would support it. Consequently, we find that it too is without merit.

The protest is denied.

HMS requests reimbursement for the costs of preparing its proposal. However, such costs can only be recovered if the Government has acted arbitrarily or capriciously with respect to the proposal. See Spacesaver Systems, Inc., B-197174, August 25, 1980, 80-2 CPD 146. In view of our conclusions above, the claim is denied.

A handwritten signature in dark ink, reading "Milton J. Aoulan". The signature is written in a cursive, flowing style with a large initial "M".

Acting Comptroller General  
of the United States